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VIA ECFS

May 3, 2016

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Attention: Wireline Competition Bureau

**Re: Mutual Telephone Company of Sioux Center, Iowa d/b/a Premier
Communications and Winnebago Cooperative Telecom Association
Joint Petition for Study Area Waiver
CC Docket No. 96-45**

Dear Ms. Dortch:

On behalf of Mutual Telephone Company of Sioux Center, Iowa d/b/a Premier Communications and Winnebago Cooperative Telecom Association ("Joint Petitioners"), please find enclosed the Joint Petition for Waiver of the Definition of "Study Area" of the Appendix-Glossary of Part 36 of the Commission's Rules.

Inquiries may be directed to the undersigned consultant for the Joint Petitioners.

Sincerely,

John Kuykendall
Vice President
jkuykendall@jsitel.com

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Mutual Telephone Company)	
of Sioux Center, Iowa d/b/a Premier)	
Communications)	CC Docket No. 96-45
)	
Winnebago Cooperative Telecom)	
Association)	
)	
Joint Petition for Waiver of the Definition of)	
“Study Area” of the Appendix-Glossary of)	
Part 36 of the Commission’s Rules.)	

JOINT PETITION FOR WAIVER

Pursuant to Section 1.3 of the rules of the Federal Communications Commission (“FCC” or “Commission”),¹ Mutual Telephone Company of Sioux Center, Iowa d/b/a Premier Communications (“Mutual”) and Winnebago Cooperative Telecom Association (“Winnebago”) (collectively, “Petitioners”) hereby request a waiver of the Commission’s study area boundary freeze codified in the Appendix-Glossary of Part 36 of FCC rules.² Petitioners seek waiver to redefine the Consolidated Communications of Iowa f/k/a Heartland Telecommunications Company of Iowa (“Heartland”) study area to exclude the Bancroft and Lakota, Iowa exchanges, and create a new study area for Winnebago comprised of the Bancroft and Lakota, Iowa exchanges.

The transaction reflects Mutual’s acquisition of Heartland from Consolidated Communications, Inc. (“CCI”) through a Stock Purchase Agreement, and Winnebago’s

¹ 47 C.F.R. § 1.3.

² 47 C.F.R. Part 36 Appendix (“Study Area. Study area boundaries shall be frozen as they are on November 15, 1984.”)

subsequent purchase from Mutual of the Heartland Bancroft and Lakota, Iowa exchanges through an Asset Purchase Agreement.

I. INTRODUCTION AND SUMMARY

Heartland is an incumbent local exchange carrier (“ILEC”) that operates approximately 6,250 access lines to customers in the Akron, Bancroft, Boyden, Doon, Hawarden, Hull, Ireton, Lakota, Rock Rapids, Rock Valley and Sibley local exchange areas in the State of Iowa, the North Rock Rapids exchange area in the State of Minnesota and the West Akron and West Hawarden local exchange areas in the State of South Dakota, Study Area Code 351096. Heartland, a rate-of-return carrier, currently is owned by CCI, a holding company with price cap regulated subsidiaries. Pursuant to the Commission’s grant of the Petition for Waiver of the “all or nothing” rule filed by Consolidated Communications Holdings, Inc. (“CCHI”), Heartland remains under rate-of-return regulation for all regulatory purposes, including CAF ICC; however, it receives CAF Phase II funding for high-cost universal service.³ Upon grant of the Domestic Section 214 Joint Application filed concurrently herewith,⁴ the ownership of Heartland will change from CCI to Mutual, and Heartland will remain the provider of local exchange services to its customers in all exchanges in its eligible telecommunications carrier (“ETC”) designated territory with the exception of the Bancroft and Lakota, Iowa

³ See *In the Matter of Consolidated Communications Holdings, Inc. Petition for Waiver of Section 61.41(c) of the Commission’s Rules*, WC Docket No. 15-74, DA 15-1138 rel. Oct. 6, 2015.

⁴ See *Consolidated Communications, Inc., Consolidated Communications of Iowa Company f/k/a Heartland Telecommunications Company of Iowa, Crystal Communications, Inc. and Mutual Telephone Company of Sioux Center, Iowa d/b/a Premier Communications, Winnebago Cooperative Telecom Association and Premier Communications, Inc. for Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, (1) to Transfer Control of Consolidated Communications of Iowa Company, an Authorized Domestic Section 214 Carrier, to Mutual Telephone Company of Sioux Center, Iowa; (2) to Assign Certain Assets of Consolidated Communications of Iowa Company to Winnebago Cooperative Telecom Association; and (3) to Assign Certain Customers of Crystal Communications, Inc. to Premier Communications, Inc. and Winnebago Cooperative Telecom Association* (filed May 3, 2016).

exchanges. The Bancroft and Lakota, Iowa exchanges will become a new study area for which Winnebago will become the provider of local exchange services, and Bancroft and Lakota exchange customers will become members of the Winnebago cooperative. The Heartland study area exchanges will remain distinct from the Mutual and Winnebago study areas. Upon grant of the requested waiver, Mutual will maintain the modified Heartland study area which is designated for price cap CAF Phase II funding, distinct from the existing Mutual rate-of-return study area and will maintain separate books of accounts. The existing Mutual study area will continue under rate-of-return regulation.⁵ Winnebago will maintain the newly created Winnebago study area, comprised of the former Heartland Bancroft and Lakota exchanges and which are designated for price cap CAF Phase II funding, distinct from the existing Winnebago rate-of-return study area and will maintain separate books of accounts. The existing Winnebago study area will continue under rate-of-return regulation.

Mutual is a rate-of-return cost company ILEC that operates approximately 3,600 access lines in the Sioux Center, Iowa exchange, Study Area Code 351252. At the conclusion of the transactions set forth in the Section 214 Application, Mutual will have acquired all operations and assets of Heartland from CCI and, pursuant to the Asset Purchase Agreement, Mutual will have transferred Heartland's Bancroft and Lakota exchanges to Winnebago. Heartland will continue as the service provider to customers in the currently designated service territory under Study Area Code 351096, with the exception of the Bancroft and Lakota, Iowa exchanges. Mutual petitions the Commission for waiver of definition of the Heartland study area whereby the existing designated

⁵ Mutual's subsidiaries (Northern Iowa Telephone Company and Webb-Dickens Telephone Corporation) will also continue under rate-of-return regulation.

service territory for Study Area Code 351096 may be modified to exclude the Bancroft and Lakota, Iowa exchanges.

Winnebago is a rate-of-return cost company ILEC that owns and operates approximately 5,200 access lines in 17 Iowa exchanges, Study Area Code 351337, and in 4 Minnesota exchanges, Study Area Code 361337. At the conclusion of the transactions set forth in the Section 214 Application, Winnebago will have purchased from Mutual the Heartland Bancroft and Lakota, Iowa exchanges and hereby petitions the Commission for waiver of the definition of the Heartland study area whereby a new Winnebago study area code may be established, comprised of the Bancroft and Lakota, Iowa exchanges. These exchanges are isolated from the other Heartland exchanges and are geographically located adjacent to Winnebago's Iowa study area, allowing Winnebago to efficiently and effectively serve customers in these locations (see Exhibit A map).

Although Heartland is owned by a price cap carrier, it remains rate-of-return regulated pursuant to the FCC's grant of its waiver of the "all or nothing" rule.⁶ When Heartland was acquired by CCI, the Commission found that solely for the purposes of high cost support, Heartland would be treated in the same manner as other CCI properties and would receive CAF support.⁷ Subsequently, CCI elected CAF Phase II support for Heartland.⁸ Per the Parent Trap Rule⁹ and recently revised 47 C.F.R. §54.902(b),¹⁰

⁶ *In the Matter of Consolidated Communications Holdings, Inc. Petition for Waiver of Section 61.41(c) of the Commission's Rules*, WC Docket No. 15-74, DA 15-1138 rel. Oct. 6, 2015.

⁷ *In the Matter of Connect America Fund, Connect America Phase II Challenge Process, High-Cost Universal Service Support*, WC Docket Nos. 10-90, 14-93, 05-337, DA-14-1447, rel. Oct.3, 2014.

⁸ *Wireline Competition Bureau Authorizes Additional Price Cap Carriers to Receive Almost \$950 Million in Phase II Connect American Support*, WC Docket No. 10-90, DA 15-968, rel. Aug. 28, 2015.

⁹ 47 C.F.R § 54.305(b).

¹⁰ *See* revised 47 C.F.R. § 54.902(b). The revised version of this regulation becomes effective 30 days after the publication in the Federal Register of *In the Matter of Connect America Fund, ETC Annual Reports and Certifications, Developing a Unified Inter-carrier Compensation Regime*, WC Docket Nos. 10-90 and

petitioners understand that the CAF Phase II funding for high cost support as accepted by CCI, as well as the build-out obligations associated with that funding will continue to apply to the Heartland exchanges which will remain in the modified Heartland study area subsequent to the transaction.¹¹ Specifically, the CAF Phase II funding associated with the locations in the exchanges that remain in the study area as well as the buildout obligations associated with the funded locations in those exchanges will continue to apply pursuant to revised 47 C.F.R. § 54.902(b):¹²

In the event that a rate-of-return carrier acquires exchanges from a price-cap carrier, absent further action by the Commission, the exchanges shall receive the same amount of support and be subject to the same public interest obligations as specified in §54.310 or §54.312, as applicable.

Because Mutual will maintain Heartland's modified study area, the CAF Phase II funding will be kept distinct from the existing Mutual rate-of-return study area. Mutual also will maintain separate books of accounts for the modified Heartland study area.

Similarly, Winnebago will maintain the newly created Winnebago study area, comprised of the former Heartland Bancroft and Lakota exchanges, and which are designated for CAF Phase II funding, distinct from the existing Winnebago rate-of-return study area and will maintain separate books of accounts. The CAF Phase II funding associated with the locations in the two acquired exchanges as well as the buildout obligations associated with the funded locations for those two exchanges will continue to apply.

14-58, CC Docket No. 01-92, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 16-33, rel. March 30, 2016.

¹¹ Upon grant of this petition, the Heartland study area will be modified to exclude the two exchanges which will be acquired by Winnebago. Mutual will maintain the modified Heartland study area, which will remain rate-of-return regulated.

¹² See revised 47 C.F.R. § 54.902(b).

Mutual and Winnebago intend to honor the committed buildout obligations for the established CAF Phase II funding eligible locations in their respective modified Heartland and new Winnebago study areas.

The population of the Mutual-acquired exchanges and the Winnebago-acquired exchanges have similar density characteristics. The Petitioners therefore request that CAF-ICC Eligible Recovery be allocated on a per-access line basis.

Petitioners are separately filing a Joint Domestic Section 214 Application for transfer of control of Heartland to Mutual and the assignment of the assets, customers and operations of Heartland's Bancroft and Lakota, Iowa exchanges to Winnebago with the Wireline Competition Bureau.¹³

II. WAIVER STANDARD

In general, the FCC's rules may be waived for good cause shown.¹⁴ Waiver is appropriate where the "particular facts would make strict compliance inconsistent with the public interest."¹⁵ The FCC may grant a waiver of its rules where the requested relief would not undermine the policy objective of the rule in question, special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.¹⁶

Part 36 of the Commission's rules which freezes study area boundaries effective November 15, 1984 is intended to prevent ILECs from establishing separate study areas

¹³ Long distance to Heartland customers is currently provided by Crystal Communications, Inc. ("Crystal"), another subsidiary of CCI. A Joint International Section 214 Application is also being filed for the assignment of the affected Crystal customers to affiliates of Mutual and Winnebago.

¹⁴ 47 C.F.R. § 1.3.

¹⁵ See *AT&T Wireless Services, Inc. et al. v. Federal Communications Commission*, No. 00-1304 (D.C. Cir. 2001), citing *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("*Northeast Cellular*").

¹⁶ See generally, *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); see also *Northeast Cellular* (D.C. Cir. 1990).

made up only of high-cost exchanges to maximize their receipt of high-cost universal service support. The Commission adopted a two-prong standard for evaluating petitions for study area waiver: (1) the state commission having regulatory authority over the transferred exchanges does not object to the transfer and (2) the transfer must be in the public interest.¹⁷

III. WAIVER IS JUSTIFIED

A. Showing that State Commission Does Not Object to Transfer of Exchange

The required notifications and applications are being filed with the Iowa Utilities Board (“IUB”) concurrent with this Joint Petition. The Joint Petitioners will keep the Commission apprised of IUB actions, and will supplement this Joint Petition upon conclusion of the state proceeding.

B. Modification of the Heartland Study Area is in the Public Interest

1. Number of Lines at Issue

The Heartland study area as modified to exclude the Bancroft and Lakota, Iowa exchanges will total approximately 5,815 access lines. The new Winnebago study area created to encompass the Bancroft and Lakota, Iowa exchanges represents approximately 435 access lines. The Bancroft and Lakota exchanges are geographically isolated from the other Heartland study area exchanges. Winnebago is strategically located to efficiently and effectively provide advanced telecommunications voice and robust broadband services to these exchanges.

¹⁷ See *Connect America Fund* et al.; WC Docket Nos. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) *aff’d sub nom.*, *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014) at 265.

2. Projected Universal Service Fund Cost Per Line

As explained above, the CAF Phase II funding and associated buildout commitments which has been accepted by Heartland will continue with no impact on the overall level of funding and associated buildout commitments since Mutual and Winnebago will receive the funding and commit to fulfilling the buildout obligations related to the locations associated with the exchanges which they will be acquiring. Further, there would be no impact on the total baseline for the CAF-ICC funding as the funds will be allocated based on access lines and then filings made from there to determine CAF/ICC.

C. Interstate Access Tariffs

Heartland is an issuing carrier in Olsen-Thielen & Co, LTD. Interstate Access Tariff F.C.C. No. 2 and will remain so immediately following grant of the Petition. Mutual is an issuing carrier in the National Exchange Carrier Association, Inc. (“NECA”) Tariff F.C.C. No. 5 and will remain so following grant of the Petition. Winnebago is currently an issuing carrier in NECA Tariff F.C.C. No. 5. Effective with the July 1, 2016 annual access tariff filing, Winnebago will exit NECA Tariff F.C.C. No. 5 and become an issuing carrier for JSI Tariff F.C.C. No. 1, and will remain so following grant of the Petition. The newly established Winnebago study area will join Winnebago in the JSI Tariff F.C.C. No. 1 post-close and will at that time retain the rates as effective in the Olsen-Thielen & Co, LTD. Interstate Access Tariff F.C.C. No. 2.

IV. CONCLUSION

As demonstrated herein, “good cause” exists for grant of this waiver. The Bancroft and Lakota exchanges which will be part of a new study area are adjacent to

Winnebago's study area. They are also geographically isolated from the other Heartland exchanges, some of which are adjacent to Mutual's study area. Both Mutual and Winnebago have a history of investing heavily in their existing service areas and strong traditions of local community involvement, all of which will benefit Heartland customers. Accordingly, grant of this petition will allow the Heartland study area to be separated in a manner which will benefit Heartland customers and allow Mutual and Winnebago to efficiently and effectively serve customers in these locations.

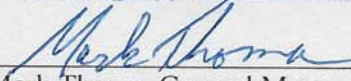
Further, the Petitioners' requested modification of the Heartland study area boundary and creation of a new Winnebago study area will not in any way burden the universal service fund or cause a shift in USF cost recovery. The proposed modification will have no impact to the Commission's budget for the amount of CAF Phase II support that has been allocated to Heartland based upon Heartland's commitment to meet the buildout obligations which Mutual and Winnebago will assume for the locations in the respective exchanges they will be acquiring. Grant of the waiver will not in any way disrupt the CAF Phase II funding earmarked for the unserved locations in the Heartland study area as Petitioners will maintain accounting for the modified study areas separately from their existing rate-of-return study areas and have committed to buildout obligations. Additionally, grant of the waiver will not impact the total baseline for the CAF-ICC funding as the funds will be allocated based on access lines.

Petitioners respectfully request the Commission's expeditious consideration of this Joint Petition in order that Petitioners may timely begin the necessary steps to meet the CAF Phase II buildout benchmarks in the required timeframe.

Respectfully Submitted,



By: Doug Boone, CEO
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IOWA D/B/A PREMIER COMMUNICATIONS
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Email: dboone@mypremieronline.com



By: Mark Thoma, General Manager
WINNEBAGO COOPERATIVE TELECOM ASSOCIATION
704 East Main Street
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May 3, 2016

DECLARATION OF DOUG BOONE

PREMIER COMMUNICATIONS

I, Doug Boone, CEO of Mutual Telephone Company of Sioux Center, Iowa d/b/a Premier Communications, do hereby declare under penalty of perjury that the statements made in this Joint Petition for Waiver are true and accurate to the best of my knowledge, information and belief.

Dated this 3rd day of May, 2016.

Premier Communications



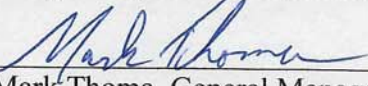
By: Doug Boone, CEO

DECLARATION OF MARK THOMA
WINNEBAGO COOPERATIVE TELECOM ASSOCIATION

I, Mark Thoma, General Manager of Winnebago Cooperative Telecom Association, do hereby declare under penalty of perjury that the statements made in this Joint Petition for Waiver are true and accurate to the best of my knowledge, information and belief.

Dated this 3 day of May, 2016.

Winnebago Cooperative Telecom Association



By: Mark Thoma, General Manager

EXHIBIT A MAP

<u>Company Name</u>	<u>Study Area Code</u>	<u>Map Color</u>
Mutual Telephone Co.	351252	Solid Green
Northern Iowa Telephone Co.	351259	Crossed Green
Webb-Dickens Telephone	351327	Dotted Green
Heartland-HickoryTech	351096	Blue
Winnebago Cooperative Assn	351337 (IA)	Red
Winnebago Cooperative Assn	361337 (MN)	Red

